
Appendix A

Analysis of Scoping Comments

Lower and East Sand Creek Placer Project

Three individuals/organizations and the Nez Perce Tribe commented during the public comment period of January 30, 2012 to February 19, 2012. The disposition of the comments are found in the Table below. The original comment letters are available in the project record.

In March 2012, the 9th Circuit District Court ruled that categorically excluded projects were no longer exempt from notice, comment and administrative appeal opportunities under 36 CFR 215 Regulations. A legal notice was published in the *Lewiston Tribune* on June 15, 2012, soliciting additional comments for previously exempted CE projects, including this project. One additional comment were received during this period.

In January 2014, the Consolidated Appropriations Act revoked the 9th Circuit District Court's ruling regarding 36 CFR 215 Regulations as they applied to categorically excluded projects.

Table 1: Comment Analysis

Commenter	Comment	Disposition
Gary Mcfarlane Friends of the Clearwater	Wind River is a crucial anadromous fishery for listed fish species. It is also critical habitat for bull trout. A CE is inadequate and contrary to the Endangered Species Act.	Potential effects to fisheries resources will be analyzed to determine whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA or an EIS.
	Taking water out of the stream and holding sluice water in small settling ponds or impoundments is likely to fail unless major structures are built in the wetlands. Thus, a 404 permit would be needed.	All required permits, including a 404 permit, will be obtained before any excavation may begin.
	The NEPA document needs to address whether the operation would produce any point sources under the Clean Water Act (CWA) where NPDESs are required.	The proposed project would comply with all applicable State and Federal water quality laws. Effects on water resources will be analyzed by the Forest Hydrologist.
	What are the RHCA buffers for this work? INFISH and PACFISH standards require that structures and other impacts be located outside of riparian habitat conservation areas (RHCAs).	A buffer of at least 20' would be maintained between any surface disturbance and adjacent live water or wetland areas. Buffer width would be adjusted as appropriate. Placing structures within wetlands or floodplains would not be permitted.
	How does working close to a stream not affect wetlands?	Potential impacts to wetlands will be analyzed and, if any, discussed in the Decision.

Appendix A / Analysis of Scoping Comments / Lower and East Sand Creek Placer Project

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<p align="center">Gary Mcfarlane Friends of the Clearwater</p>	Demonstrate compliance with the ESA for listed fish species.	Consultation with the National Marine Fisheries Service on project effects to ESA listed fish species will be conducted, if required.
	Show that the requirements of NFMA are met in regard to other native salmonids such as Westslope cutthroat trout or MIS species dependent upon aquatic or riparian environments.	Effects to species dependent on aquatic or riparian habitats / environments will be analyzed.
	Demonstrate how the project meets forest plan requirements for fish habitat and water quality.	Meeting the Nez Perce Forest Plan requirements for fish habitat and water quality are mandatory for all mineral-related projects.
	The agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law.	Thank you for your comment.
	The automatic assumption this can be approved with a CE fails to take a hard look at the crucial issue of RHCAs and whether this complies with PACFISH, the CWA, the ESA, cumulative impacts from other nearby mining projects, and forest plan standards.	The project meets all the criteria outlined in 36 CFR 220.6., therefore the use of a CE is appropriate.
<p align="center">Jonathan Oppenheimer, Idaho Conservation League</p> <p>[ICL's comments on four placer exploration projects, included Lower & East Sand Creek Placer Exploration.]</p>	Although the 1872 Mining Law establishes a legal framework for mineral location and entry on public lands, the Forest Service is not obligated to approve plans of operations if it does not fulfill the requirements of all other applicable laws and regulations.	Thank you for your comment.
	The Forest Service must submit a biological assessment on all possible threats to listed species ... [and] must consult with the USFWS and NOAA - Fisheries.	Effects to listed species will be analyzed and consultation with the USFWS and NOAA-Fisheries will be conducted, if needed.
	We are concerned that the increase in human activity, particularly with regard to the continual noise from drilling operations, will displace these, and other, species or prevent them from using these areas as corridors.	The project does not propose drilling. Noise levels would be equal to that of any other mechanized earth-moving equipment that normally operates on the Forest. Impacts to wildlife from human activity and noise associated with the project will be analyzed.
	All operations must comply with protective standards and regulations in the Forest Plan concerning mining, road construction, and tree removal, as amended by PACFISH.	All operations would comply with Forest Plan standards, including those amended by PACFISH.

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<p>Jonathan Oppenheimer, Idaho Conservation League</p> <p>[ICL's comments on four placer exploration projects, included Lower & East Sand Creek Placer Exploration.]</p>	If any discharge from mining activities is anticipated to occur, effects to sensitive, threatened, and endangered species represents an extraordinary circumstance and justify preparation of an EA or EIS.	TES species will be analyzed to determine whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA or an EIS.
	A hazardous material plan needs to be in place in the event of a fuel or solvent leak	This is a standard mitigation measure and would be included in the Plan Of Operations, if approved.
	Monitoring should be conducted at specified intervals throughout the mining operation and throughout reclamation.	Monitoring and site inspections are required for mining-related projects. The frequency of inspections is commensurate with the size and complexity [of the operations] (NP Forest Plan, p.II-7).
	All equipment should be cleaned to dislodge any soil, seeds, and vegetation before entering National Forest system property.	This is a standard mitigation measure and would be included in the Plan Of Operations, if approved.
	If sumps are proposed for use, drilling operations should be suspended if the sump approaches capacity to allow infiltration to occur.	This is a standard mitigation measure and would be included in the Plan Of Operations, if approved.
	Regarding water withdrawal for mining operations, the designated water pumping location needs to minimize impacts on riparian vegetation and soil disturbance.	This is a standard mitigation measure and would be included in the Plan Of Operations, if approved.
	The timing of water withdrawal should be defined to avoid impacts to aquatic organisms and sensitive, threatened, and endangered species.	The timing of water withdrawal would be contingent on when / if the project was implemented. Regardless, water use would be monitored and regulated so as to pose no hazards to aquatic organisms and threatened, endangered, and sensitive species.
	Drilling and exploration activities need to be conducted outside of Riparian Habitat Conservation Areas.	Mineral exploration may occur in riparian areas, so long as potential resource issues have been identified and design criteria and/or mitigation measures are followed.
	Weed-free straw bales should line any drainage areas to protect streams from sedimentation and be removed upon completion of operations.	This is a standard mitigation measure and would be included in the Plan Of Operations, if approved.
	The Forest Service should require the use of best management practices (BMPs) ... and require additional mitigation measures for test holes, trenches or other exploration infrastructure near riparian areas.	All appropriate BMPs for water quality and State of Idaho BMPs for mining would be followed. In addition, standard mitigation measures have been developed and would be implemented as appropriate.

Commenter	Comment	Disposition
<p>Jonathan Oppenheimer, Idaho Conservation League</p> <p>[ICL's comments on four placer exploration projects, included Lower & East Sand Creek Placer Exploration.]</p>	<p>The effects of mining activities on surface water and groundwater quantity and quality need to be determined for a full range of flow conditions at the mining site and along the transportation routes. This geochemical analysis should include the following factors:</p> <ul style="list-style-type: none"> • Sedimentation • Transportation of hazardous or toxic materials • On-site water needs • Source of water • The depth and flow of water table • Drilling depth • The potential for chemicals and toxins to leach into surface and groundwaters • Water capture and subsequent leakage by sumps • Waste water discharge from site • Storm water runoff 	<ul style="list-style-type: none"> • Sedimentation from roads and trails would be monitored and mitigated as stipulated in the approved Plan of Operation. • Fuel and oil would be the only toxic materials on site. A spill prevention plan would be in place, per the Plan of Operation, before activities could begin. • Onsite water needs and sources were addressed in the Scoping notice. • A detailed analysis of water table depth and flow is beyond the scope of this project. A more detailed analysis would be conducted if full scale mining is proposed at a later time. • The project does not propose any drilling. • No chemicals and/ or toxins would be discharged onsite. • No sumps would be used. • No water would be discharged from the test pits into the surrounding area. If required, excess water may be applied to upland areas. This would apply to excess storm water runoff as well.
	Groundwater from trenches is required to meet the Idaho State Groundwater Standards.	All of the proposed activities would be conducted under and meet applicable groundwater standards.
	We are concerned about recreational and wildlife impacts in terms of noise and site occupation.	Noise levels would be equal to that of any other mechanized earth-moving equipment that normally operates on the Forest.
	Water pumping, trenching and drilling should be limited to daylight hours to reduce impacts on recreationists and wildlife.	Activities would be expected to occur between the hours of 0600 in the morning to 2000 in the evening
	All activities need to be completed within one year from issuance of the permit or the bond should be forfeited.	The duration of the operation would be one year or less.

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<p>Jonathan Oppenheimer, Idaho Conservation League</p> <p>[ICL's comments on four placer exploration projects, included Lower & East Sand Creek Placer Exploration.]</p>	<p>On-Site Living Situation:</p> <ul style="list-style-type: none"> • All garbage must be disposed of appropriately in a timely fashion. • To avoid contaminating the area with human feces, a portable toilet river-running style toilet should be located on the site and serviced regularly. • To minimize impacts to recreationists and wildlife, operations should be limited to daylight hours and generators should be limited to campground hours. • Regularly inspected fire extinguishers and shovels need to be placed in all vehicles. • To reduce risks of fires, all on-site burning should be conducted within a fire pan or fire ring. Only combustible materials should be placed within the fire ring. Burning should not be allowed during moderate to high fire risk periods. 	<ul style="list-style-type: none"> • This is a standard mitigation measure and would be included in the Plan Of Operations, if approved. • Sanitary facilities such as those referenced would be available and used at the site. • The operator would be required to adhere to the same standards as all other forest users regarding the use of generators, sound levels, etc. • Mining claimants and operators would have all needed fire prevention equipment on site. • Mining claimants and operators would be required to adhere to the same fire prevention/protection standards as all other forest users and equipment operators.
	<p>The Forest Service needs to analyze cumulative effects from past, current, and foreseeable mining, timber, or recreational activities in and around the project area.</p>	<p>Cumulative effects of the proposed activities will be evaluated. The scope of the cumulative effects analysis will be determined by the individual resource specialists.</p>
	<p>Reclamation and Bonding:</p> <ul style="list-style-type: none"> • Reclamation must take place concurrently with the mining operation and return the site to a more natural condition than presently exists. • Complete reclamation should occur as soon as possible after operations cease. • A reclamation plan and full bonding must be secured prior to approval of the Plan of Operations. 	<ul style="list-style-type: none"> • Reclamation conducted concurrent with ongoing operations is a standard mitigation measure. • Seasonal closeout and reclamation must be completed no later than October 1. • A reclamation plan would be developed for this project. A bond for the amount to cover all required reclamation costs would have to be submitted by the operator before the Plan of Operations was approved and work could begin.

Commenter	Comment	Disposition
Dick Artley	During precipitation events the earth removed from the 18 test pits will find its way to the creek and create sediment. Short term degradation of T&E species habitat is not allowed <u>anywhere</u> regardless of whether the project is analyzed and documented in an EIS, EA ... or if the project is a CE.	All appropriate BMPs for water quality standards and State of Idaho BMPs for mining would be followed. In addition, standard mitigation measures, including methods designed to reduce sediment movement into streams, have been developed and would be implemented as appropriate.
	This project may violate the Endangered Species Act. The only way to determine if this is so is to perform an environmental effects analysis. Projects that may harm habitat for species list under the ESA clearly indicate that extraordinary circumstances do exist.	Effects to T&E species will be analyzed to determine if there are extraordinary circumstance(s) that would necessitate the project being elevated to an EA.

Additional Comments on the Lower and East Sand Creek Exploration Project

The following comments were received post-scoping and are included in the project record.

Commenter	Comment	Disposition
Idaho Conservation League Supplemental Comments (The ICL supplemental comments were on 26 small mining projects, including the Lower & East Sand Creek Placer project.)	[W]e feel strongly that an EA is required for each project based on the degree of, or uncertainty surrounding, extraordinary circumstances present for each project.	The project meets all the criteria outlined in 36 CFR 220.6., therefore the use of a CE is appropriate.
	We also [have] concerns about whether each Project would comply with the Forest Plan, the Endangered Species Act, other laws and regulations.	The project meets all the criteria outlined in 36 CFR 220.6., therefore the use of a CE is appropriate.
	We believe it is improper for you to approve any of these 26 projects using Category 8 and must at a minimum prepare an EA for each project.	The project meets all the criteria outlined in 36 CFR 220.6., therefore the use of a CE is appropriate.
	[T]he agency cannot utilize Category 8 ... the Ninth Circuit has held, an agency's decision to establish a category of actions that are excluded from full NEPA review can only be made with a full understanding of the significance of the impacts resulting from application of the category.	The issue is outside the scope of the proposed action.
	The Forest Service never performed a direct, indirect or cumulative impacts analysis (or any of the required ESA consultation and analysis) on Category 8 -- routine, short-term mining investigations and their incidental support activities -- and the related provisions in Chapter 30 of the Forest Service Handbook [re:] extraordinary circumstances.	The issue is outside the scope of the proposed action.

Commenter	Comment	Disposition
<p>Idaho Conservation League Supplemental Comments</p> <p>(The ICL supplemental comments were on 26 small mining projects, including the Lower & East Sand Creek Placer project.)</p>	[B]ecause adoption of Category 8 and Chapter 30 violated NEPA and the ESA, the Forest cannot rely upon on those provisions for approval of the proposed exploration projects.	The issue is outside the scope of the proposed action.
	[E]ven if Category 8 was properly adopted, we question whether you can use Category 8 to approve any of these 26 mineral exploration projects, because [they] are concentrated in three ranger districts and have potentially significant cumulative impacts on the human environment. Accordingly, Category 8 cannot be used to approve these projects.	The issue is already decided by law, regulation, Forest Plan, or other higher level of decision. Since we have determined no extraordinary circumstances exist (per 36 CFR 220.6), the use of a CE is appropriate for each project.
	Not only must you consider the cumulative impacts of [the] 26 Projects currently being considered for approval under Category 8 ... you must also consider the impacts of all projects previously approved using Category 8. Further-more, you must review any other past, present, or reasonably foreseeable impacts in your cumulative impacts analysis for these projects, including but not limited to: road construction, timber management, minerals exploration and development, livestock management, travel management, wildfire, prescribed fire, or other activities.	Cumulative effects of the proposed activities will be analyzed. The scope of the cumulative effects analysis will be determined by the individual resource specialists.